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#515

4 February 1954

Transportation - 7

**\*OGC Has Reviewed\***

MEMORANDUM FOR: Chief of Administration, DC/P

SUBJECT: Reimbursement for Shipment of Automobile

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1. This will acknowledge receipt of your memorandum of 21 January 1954 attaching a submission from FE Division dated 12 January 1954 and requesting our opinion whether reimbursement of the expense of shipping [REDACTED] automobile may be made.

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2. The memorandum from FE Division indicates that [REDACTED] 25X1A9a is a Staff Agent assigned to project [REDACTED] and was ordered to duty with this project in January 1953 to be stationed at [REDACTED] 25X1A9a accordingly received travel orders which, inter alia, authorized shipment 25X1A6a of his personal automobile from Providence, Rhode Island to San Francisco, California and thence to [REDACTED]. In the course of processing Mr. 25X1A6a [REDACTED] claim for reimbursement of the expense of shipping his personal automobile, Finance Division gave its written opinion to FE Division that this was not an allowable expense since, as a matter of general Agency policy, personal automobiles may not be shipped at Agency expense within the United States. FE Division has appealed this ruling and in its memorandum of 12 January 1954 has outlined several reasons why the expense of shipping the automobile in question should be borne by the Agency. These include:

(a) Because of the age of [REDACTED] children he could not drive to the West Coast and would have sold his car rather than ship it at personal expense. 25X1A9a

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(b) The nature of [REDACTED] assignment required an automobile at his disposal and when the shipment provided for by the travel order was "authorized by signature," [REDACTED] the branch to which [REDACTED] was assigned and which prepared the travel orders, assumed that this was a perfectly legitimate expense. 25X1A9a

(c) 80% of [REDACTED] mileage on the West Coast has been operational, and if he had not brought his own car, the Agency would have had to provide one. 25X1A9a

(d) A requirement that [REDACTED] pay the cost of transporting the automobile, which was shipped in reasonable reliance upon approved travel orders, will cost him 25X1A9a

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in excess of one month's salary and would impose upon him an unreasonable financial burden for which he is not responsible.

3. From the present state of the record or of the facts as described to us we perceive no basis on which reimbursement could properly be made in this case. Under ordinary circumstances shipment of personal automobiles within the United States by the Agency is not only against Agency policy but contrary to statute. (see 5 USC, section 73(c)).

While we are sympathetic with [REDACTED] predicament outlined in reasons (a) and (d) we see no alternative but to discount these reasons on the ground that they are personal considerations of [REDACTED] and not susceptible to legal relief by the Agency. The second reason advanced for reimbursement implies that [REDACTED] and his branch had a right to reply upon the travel order and states that shipment of the automobile was "authorized" by signature by the appropriate official of the Division. This rationale, while also entitled to sympathetic consideration, cannot be the basis of legal determination in the face of the settled principle that the United States is not bound or estopped by an erroneous authorization made by one of its officers, with or without jurisdiction, and whether made under mistake of fact or of law.

4. There remains the question put forward in reason (c) and implied in reason (b) to the effect that the use of [REDACTED] automobile was "operational" and that the Agency could reimburse Mr.

[REDACTED] for the shipment on the basis of the extraordinary authorities granted the Agency under section 10(b) of Public Law 110. It has been the consistent position of this office, in line with the decision of the Comptroller General (31 Comp. Gen. 191) that the use of CIA's unusual authority is not contemplated as a means of disregarding "... any control with respect to the normal administrative or operating problems which confront the ordinary Government agency." It must be shown, therefore, that the operational necessity which required shipment of the automobile has some relation to the peculiar functions of the Agency and is not a matter of convenience. From the facts presented it does not appear that this is a proper case in which to invoke the Agency's authority under section 10(b). There is nothing to indicate that security or operational considerations dictated shipment of the automobile or precluded [REDACTED] from driving it to his new assignment. We suggest, however, that there might be additional facts not known to us which would throw a different light on the problem and that you may wish to refer the matter to the FBI officer who originally authorized the shipment for presentation of any additional facts which it is felt might justify reimbursement in the light of the Agency's authority under section 10(b) of Public Law 110.

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OGC/IMF:edg

cc: Orig & 1 - Addressee    1 - Signer  
             1 - Legal            1 - Subject  
             1 - Vital            1 - Chrono

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